IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

Writ Petition No. 6198 of 2004

Anees Khalil Momin..petitioner
vs
The Commissioner
Municipal Corporation for the
City of Bhiwandi Nizampur and ors.. respondents

Mr.P.K.Dhakephalkar with Niranjan Shimpi for pet
Mr. Y.S.Jahagirdar Sr Adv with Nitin Jamdar for respondent no. 2
Mr.A.G.Damle for respondent no. 3
Ms J S Pawar Addl G P for respondent no. 4

CORAM; A.P.SHAH & S.U.KAMDAR JJ.

Dated 9th Sept 2004

ORAL JUDGMENT (Per A.P.Shah J)

Rule.

2. Learned counsel appearing for the respondents waive service. By consent, rule is made returnable forthwith.

3. By this petition, the petitioner is seeking an appropriate writ, order or direction quashing and setting aside the letter dated 2l.7.2004 recognising the respondent no.3 as a Leader of Opposition in Bhiwandi Nizampur Municipal Corporation. The petitioner has invoked the jurisdiction of this Court under Article 226 contending inter alia that he belongs to Samajwadi

Party which is the largest party in opposition and hence the petitioner ought to have been recognised as a Leader of Opposition in Bhiwandi Nizampur Municipal Corporation - the respondent no.l herein. The respondent no.l is a Corporation created and established under section 5 of the Mumbai Provincial Municipal Corporations Act, l949, thereinafter referred to for brevity's sake as "the Act". The respondent no.2 is the Mayor of the respondent no.l elected under section l9 of the Act. The respondent no. 2 has recognised the respondent no. 3 as the Leader of Opposition. This decision is impugned by the petitioner on the ground of being unlawful and contrary to law and that the petitioner ought to have been recognised as Leader of Opposition.

4. Before we examine the challenge raised by the petitioner, it is necessary to note the position of various political parties in Bhiwandi Nizampur Mun Corporation which is as under:

Sr No.	Name of political Party	No of Councillors

l	Indian National Congress (I)	23
2	Samajwadi Party	l7
3.	Shiv Sena	9
4.	Bhiwandi Vikas Manch Aghadi	8
5.	B J P	3
6.	Independents	23

5. The respondent no. 2 who belongs to Indian National Congress (I) (INC for short) elected as the Mayor of the Corporation whereas one Tafzzul Hussin Maqsood Hussain Ansari of Samajwadi Party was elected as the Deputy Mayor. The Samajwadi Party which is the second largest party in the house, has recommended the name of the petitioner for the post of Leader of Opposition in accordance with provisions of section l9(l)AA of the Act. As per the provisions of the said section, an elected Councillor who is the Leader of the party in Opposition having greatest numerical strength, and, recognised as such by the Mayor shall be the Leader of the Opposition. The petitioner claims that he belongs to Samajwadi Party which is having l7 elected Councillors and, therefore, the said Samajwadi Party is the largest party in opposition and hence the petitioner has a right to be

recommended for the post of Leader of Opposition. By the impugned letter dated 2l.7.2004, however, the respondent no. 2 recognised the respondent no. 3 as Leader of Opposition .

6. The impugned letter dated 2l.7.2004 on translation reads as follows:

> "To
> Shri Naik Madan (Buva)Krishna,
> Member, Standing Committee,
> Bhiwandi Nizampur City Municipal
> Corporation, Bhiwandi.
>
> Sir
>
> In the Bhiwandi-Nizampur City Municipal Corporation, the Mayor is from the Congress Party and the Deputy Mayor is from the Samajwadi Party, and the Congress and Samajwadi Party are working as ruling party.
>
> As the Shiv Sena Party is the party having largest numerical strength

after the ruling party in the Bhiwandi Nizampur City Municipal Corporation , you are hereby recognised as the Leader of Opposition of the Bhiwandi Nizampur City Municipal Corporation.

Bhiwandi Nizampur City
Municipal Corporation
(emphasis supplied)

7 . Mr Dhakephalkar learned cuonsel for the petitioner strenuously contended that under section l9(l)AA of the Act, the respondent no.2 was required to recognise the Leader of the party in Opposition having greatest numerical strength as Leader in Opposition. As per the numerical strength the Samajwadi Party which was a party in Opposition was having "greatest numerical strength" and as such Leader of that party ought to have been recognised as a Leader of Opposition by the respondent no.2. The learned counsel contended that it was totally incorrect and false to suggest that the INC and Samajwadi Party are working as ruling party. There was no pre-election alliance between the two parties but they had put up their

candidates independently in the election and in several Wards they contested against each other. Therefore it cannot be said that there was alliance, aghadi or yuti between these two political parties. The learned counsel submitted that there is also no material on record to show that there was post election alliance between INC and Samajwadi Party. The action of the respondent no. 2 in recognising the Leader of Shivsena Party as a Leader of Opposition is, therefore, wholly illegal and malafide.

8. In order to appreciate the contentions of the learned counsel it is necessary to refer briefly to the provisions of the Mumbai Provincial Municipalities Act, l949. Chapter II of the Act provides for constitution of municipal authorities. Corporation has been defined as "the Municipal Corporation constituted or deemed to have been constituted " under the Act. Section 5 declares that every Corporation shall be a body corporate having perpetual succession and a common seal and may sue and be sued.Section l9 enacts that the Corporation at its first meeting after general election shall elect from amongst the Councillors,

one of its members as a Mayor and another to be a Deputy Mayor. The tenure of Mayor and Deputy Mayor is two and a half years. Regarding powers and duties of Mayor, the said section is silent. By Maharashtra Act No XI of 2002, certain amendments have been made in the Act. By the said amendment section l9-lA and l9-lAA came to be inserted. The provisions of section l9-lA and l9-lAA read as follows:

> "l9-lA. Leader of House- (l) An elected Councillor who is, for the time being, the Leader of the party having the greatest numerical strength and recognised as such by the Mayor shall be the Leader of the House.
>
> Explanation- When there are two parties in ruling having the same numerical strength, the Mayor shall, having regard to the status of the party, recognise the Leader of any one of such parties to be the Leader of the House.

(2) There shall be paid to the Leader of the House such honoraria and allowances and other facilities as may be provided by regulations made in this behalf by the Corporation.

"l9-lAA. Leader of Opposition--(l) An elected Councillor who is, for the time being, the leader of the party in opposition, having greatest numerical strength and recognised as such by the Mayor, shall be the leader of the Opposition.

Explanation- Where there are two or more parties in the opposition having the same numerical strength, the Mayor shall, having regard to the status of the party, recognise the leader of any one of such parties as a leader of the opposition for the purposes of this Act and such recognition shall be final and conclusive.

(2) There shall be paid to the leader

> of the Opposition such honoraria and allowances and other facilities as may be provided by the regulations made in this behalf by the Corporation".

9. The expression "party in opposition" and "Leader of Opposition" have not been defined in the Act. The phrase "Leader of the Opposition", however, has been defined in Maharashtra Legislature Salaries and Allowances Act, l978. The said expression reads thus:

> "In this Act, "Leader of the Opposition" in relation to either House of the State Legislature, means that member of the State Legislative Assembly or the State Legislative Council, as the case may be, who is , for the time being, the leader in that House of the party in opposition to the State Government having the greatest numerical strength and recognised as such by the Speaker of the Assembly or the Chairman of the Council as the case may be."

Other sections of the said Act provide for salary, residence, conveyance, travelling and daily allowances and other facilities to the Leader of Opposition.

l0. The question which we are called upon to decide is, whether Samajwadi Party can be said to be in opposition and whether respondent no. 3 could have been recognised as leader of the party in Opposition. A bare perusal of section l9(l)AA shows that in order to recognise a person as a Leader of Opposition, he must belong to a party in Opposition and if the numerical strength of the said party in the Opposition is greatest one, then the leader of the said party is to be recognised as a Leader of Opposition. The phraseology and language used in the said section clearly shows that a Councillor of a party in Opposition and leader of the same party, if the said party is having greatest numerical strength has to be recognised by the Mayor of the Leader of Opposition. In case of unequal strength of a party in Opposition, the Mayor has no option but to recognise the Councillor of the party having

greatest numerical strength as Leader of Opposition. Our attention was also drawn to Maharashtra Local Authority Members Disqualification Act, l987. The said Act defines Councillors, Local Authorities, original Political Party, and Municipal Party. The said Act also defines the political party or aghadi or front. It is also important to note that for the purposes of implementation of the Maharashtra Local Authority Members Disqualification Act, rules have been framed and as per those rules, the leader of the political party is expected to submit information about the members of his political party of Municipal Party . There is no dispute that there is no political front formed between the INC and Samajwadi Party and, therefore, by no stretch of imagination the Samajwadi Party can be said to be a ruling party. Merely because the Deputy Mayor belongs to Samajwadi Party,it cannot be said that the Samajwadi Party is a ruling party.

ll. The learned counsel for the petitioner drew our attention to an unreported decision of this Court delivered by the Division Bench comprising of the Hon‘ble the Chief Justice and Dr D Y

Chandrachud J, in Writ Petition No. 6798 of 2002(Rohidas Shankar Patil vs Smt Mayra Gilbert Mendosa and ors). That was also a case of recognition to the post of Leader of the Opposition. In that case, the INC was the second highest in numerical strength and the member of the said party was recognised as the Leader of the Opposition. It was contended that there was an alliance or understanding between the Nationalist Congress Party and INC and, therefore, INC should be regarded as a party in ruling along with the Nationalist Congress party. The learned Chief Justice speaking for the Bench observed:

> "2l. The question which we are called upon to decide is, whether INC can be said to be party in opposition and whether respondent no. 4 could have been recognised as leader of the party in opposition. According to the petitioner, INC is a party in ruling and party in ruling cannot be considered and recognised as party in opposition. In the circumstances party in opposition can be any party

other than NCP and INC. From those parties, Leader of Opposition can be recognised. Now, considering other parties i.e. parties in opposition , BJP is the only party which is having greatest numerical strength. The said party, therefore, ought to have been recognised as such by the first respondent and the petitioner ought to have been recognised as leader of the party in opposition.

2. We are unable to uphold the contention of the learned counsel. So far as pre-election aghadi, yuti, front or alliance is concerned, it has been clearly refuted and denied by the respondents. Affidavits have been filed by respondent nos.l,3 and 4 asserting that the allegation levelled by the petitioner is incorrect and misleading. It is further stated that, there was no formal pre-election alliance between NCP and INC. That apart, both the parties contested the

election against each other in several Wards. In the circumstances, it cannot be said that there was pre-election alliance between NCP and INC".

(emphasis supplied)

l2. Mr Jahagirdar and Mr. Damle, learned counsel appearing for respondent nos. 2 and 3 strenuously contended that the Samajwadi Party was a party in ruling and, therefore, it cannot get recognition as a Leader of Opposition. In order to support this submission, it was argued that there can be more than one party in ruling and such a situation has been recognised even by the Legislature. Explanation to section l9-lA clearly deals with the situation when there are two parties in ruling having the same strength by laying down how Mayor should be elected. The learned counsel are not wrong in interpreting the explanation. However, the question is whether there is any material on record to substantiate the claim that there was alliance between the INC and Samajwadi Party. In the absence of any such material we are unable to hold that INC and Samajwadi Party should be

regarded as parties in ruling as contemplated by section l9(l)(A). It is an admitted position that there was no aghadi or pre-election alliance between these two parties and in fact in certain Wards both the parties contested the election against each other. The provisions of the Maharashtra Local Authority Members Disqualification Act, l986 specifically rules out any post alliance between the political parties. In any event, there is not an iota of material to show that the INC and Samajwadi Party had post poll alliance. We have, therefore, no hesitation to hold that Samajwadi Party cannot be treated as a party in ruling.

l3. The learned counsel for respondent nos 2 and 3 urged that earlier one Javed Dalvi was appointed as Leader of Opposition and this appointment was not challenged by the Samajwadi Party and this shows that Samajwadi Party had an alliance with INC. We are not impressed by the submission of learned counsel. It is seen from the record that respondent no.2 had initially appointed one Santosh Shetty who was elected as independent candidates as Leader of Opposition. The appointment of Santosh

Shetty was challenged in this court and was stayed. Thereafter respondent no. 2 again appointed one Javed Dalvi who was also elected as an independent. The appointment of Javed Dalvi was also not in consonance with section l9(l)(AA). Merely because the appointment of Javed Dalvi was not challenged by the Samajwadi Party does not lead to the conclusion that the Samajwadi Party was a party in ruling. The learned counsel also contended that in the letter of request the Samajwadi Party has not specifically mentioned that it is a party sitting in opposition. The submission is stated only to be rejected. By that letter the Samajwadi Party specifically asked the Mayor to give recognition to the petitioner as Leader of the Opposition. So it is obvious that the Samajwadi party was claiming that it was a party in opposition.

l4 In the circumstances,it is not possible to sustain the action of the respondent in recognising respondent no. 3 as the Leader of Opposition. We, therefore, quash and set aside the letter dated 2l.7.2004 and direct that the respondent no.2 shall issue letter of appointment as Leader of Opposition in light of our judgment within a period of four

weeks.

Learned counsel appearing for the respondent nos. 2 and 3 apply for stay of this order. Application is rejected.